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Candace Havens  
Director


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## PUBLIC HEARING MEMORANDUM

Public Hearing Date:	April 25, 2011
Zoning and Planning Action Date:	To be determined
Board of Aldermen Action Date:	To be determined
90-Day Expiration Date:	To be determined

**DATE:** April 22, 2011

**TO:** Alderman Marcia T. Johnson, Chairman, and  
Members of the Zoning and Planning Committee

**FROM:** Candace Havens, Director of Planning and Development   
Jennifer Molinsky, Chief Planner for Long-Range Planning  
Seth Zeren, Chief Zoning Code Official

**RE:** **PUBLIC HEARING: Petition #65-11.** *Terrence P. Morris & Joseph Porter* proposing an amendment to the zoning ordinance to change the definition of "height" with a concomitant increase in the height to the pre-1997 limits; to make height exceptions in accessory buildings subject to special permit rather than a variance.

**CC:** Mayor Setti D. Warren  
Board of Alderman  
John Lojek, Commissioner, Inspectional Services Department  
Marie Lawlor, Assistant City Solicitor  
Planning and Development Board

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The purpose of this memorandum is to provide the Board of Aldermen, Planning and Development Board, and the public with technical information and planning analysis which may be useful in the decision making process of the Board. The Planning Department's intention is to provide a balanced view of the issues with the information it has at the time of the public hearing. There may be other information presented at or after the public hearing that the Zoning and Planning Committee of the Board of Aldermen will consider in its discussion at a subsequent Working Session.

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## I. Background and Summary

This Petition, requesting amendments to height regulations, was filed in concert with Petition #17-11, which requests a change in the method of measuring “grade plane.” Grade plane defines the baseline from which the height of a building is measured. During the discussion of potential revisions to the grade plane definition, the overall topic of building height was raised. In response, this Petition #65-11 was docketed to consider revisions to the definition and regulation of height in the zoning ordinance. The proposed changes primarily affect the regulation of height of structures and accessory structures in Residence zones.

## II. Current Height Definition

The definition of height in Section 30-1 of the Zoning Ordinance lays out the method for calculating building height, which is regulated in Section 30-15, Density/Dimensional Controls. Under the current definition, height is calculated as the distance between the “average grade plane” and the midpoint between the roof peak and the intersection of the roof and the wall plate (see Figure 1 and Figure 2).

Figure 1.

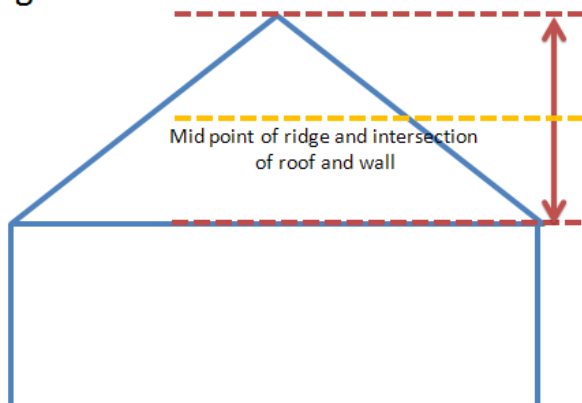


Figure 2.

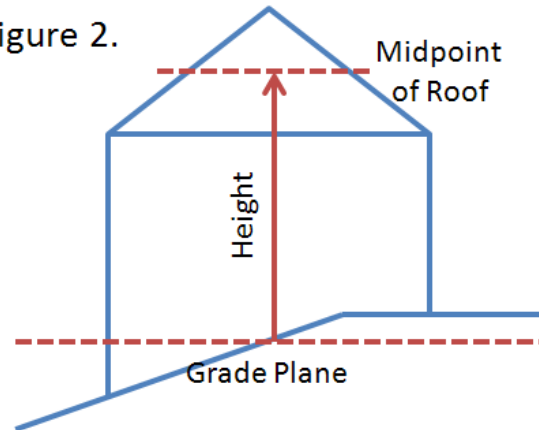


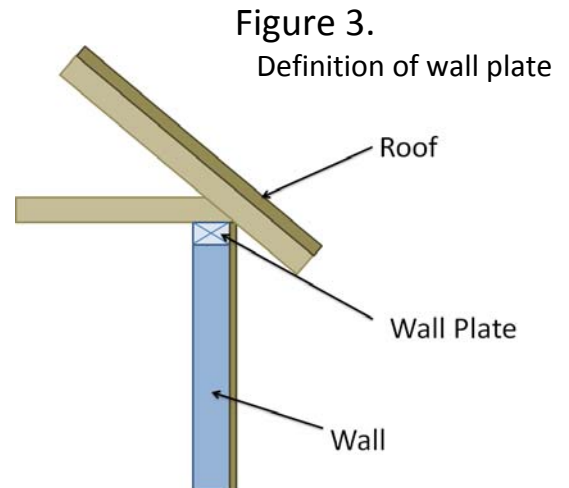
Figure 1 and Figure 2 show how building height is measured. Figure 1 shows how the midpoint between the roof peak and the intersection of the roof and wall is calculated. Figure 2 shows how the midpoint and the grade plane together describe the height of a building.

The current definition of grade plane in the Zoning Ordinance is as follows:

*Sec. 30-1 Height:* The vertical distance between the elevations of the following: (a) the average grade plane and (b) the midpoint between the highest point of the ridge of the main building roof and the line formed by the intersection of the top of the main building wall plate and the main roof plane. Not included in such measurements are 1) cornices which do not extend more than five (5) feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and ornamental features.

According to the Inspectional Services Department (ISD), there are two key issues with the current definition of “height” in the Zoning Ordinance:

1. **The current method of measuring building height, as defined in the Zoning Ordinance, is confusing and can be used by those measuring it to increase peak height beyond the intention of the definition.** The term of art, “wall plate,” used in the definition is actually a construction feature. This language appears to be a scrivener’s error and the intended language was “wall plane,” describing the geometry of the wall and the intersection of two planes (the roof and the wall). Measuring from the “wall plate” lowers the point where roof and wall “intersect,” allowing the peak height to increase while keeping the midpoint at the same required height (as in Figure 4, below).



2. **The current method does not actually regulate the absolute height of a structure.** The peak height of a conforming structure can vary considerably depending on the shape of the roof. Because the midpoint of the roof is higher on structures with steeply pitched roofs, buildings with steeply pitched roofs may be taller than those with flatter roofs. Similarly, by lowering where the wall and roof intersect, the allowed peak height can increase. (See Figure 4, below)

Figure 4.  
Identical “Height”

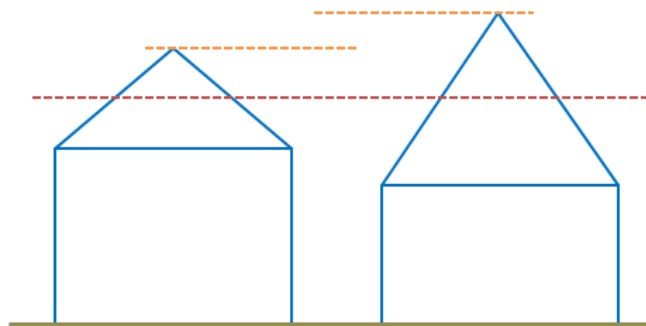


Figure 4 shows how two buildings can have significantly different peak heights with the same “midpoint” height, as defined in Section 30-1 of the Zoning Ordinance.

As shown in the definition of “height,” above, there are a number of exceptions to the current calculation of height:

- Cornices which do not extend more than five (5) feet above the roof line
- Chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line;
- Enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and
- Towers, spires, domes and ornamental features.

Recent history of the height definition includes the following ordinances (see Appendix A for copies of original memorandums and ordinances):

- In 1997, Ordinance V-111 revised the then existing definition of height to measure height to the “highest roof surface” and lowered the allowed height to 30 feet (from 36 feet) to reduce development potential and protect existing structures. The main issue, as reported in a contemporary planning department memo, was the proliferation of large houses replacing smaller, historic homes.
- In 1999, Ordinance V-232 revised the definition again, creating our current method of measuring from the grade plane to the midpoint between the peak and the intersection of the roof and wall planes with the intent of encouraging pitched-roof designs.
- In 2008, Ordinance Z-20 made one minor adjustment to the current definition by replacing the phrase “grade plane” in the definition of height with the phrase “average grade plane.” (Ordinance Z-20 was otherwise primarily concerned with creating dimensional regulations for dormers.)

## II. Proposal

Petition #65-11 proposes three separate revisions to the zoning ordinance. First, the petition calls for changing the definition of height in Section 30-1 of the Zoning Ordinance so that height is measured to the roof peak rather than the midpoint between wall plate and roof peak. Second, it calls for a commensurate increase in the allowed heights in Section 30-15, Density/Dimensional Requirements, to account for the change in how height is measured. Third, the petition calls for a change in how relief is provided from height requirements in accessory structures.

### 1. **Redefine Height.** ISD and the Planning Department suggest the following revised definition of “height:”

*Section 30-1: Height:* The vertical distance between the elevations of the following: (a) the average grade plane and (b) ~~the peak of the roof line~~ the highest roof surface. Not included in such measurements are 1) cornices which do not extend more than five (5) feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and ornamental features.

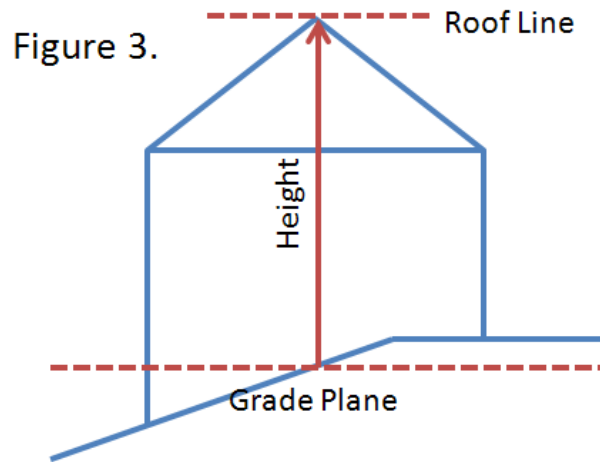


Figure 3 shows how height would be calculated under the proposed revision to the definition.

2. **Increase height limit.** The petitioner suggests a concomitant increase in the current height limit of 30 feet in most residential districts to the pre-1997 limit of 36 feet.
3. **Allow height limits for accessory structures to be waived by special permit.** The petitioner seeks to change the type of relief available for the height of accessory structures. An addition to Section 30-15(m)(2) would be required to allow the maximum height requirement to be waived by special permit from the Board of Aldermen. Currently, the default relief for height over that allowed is through a variance from the Zoning Board of Appeals.

### III. Analysis

The Planning Department's analysis involved the following:

- Examining the general merits of a revision in the definition and regulation of height;
- Researching how other communities measure and regulate residential height;
- Considering the impact the change in method might have on building outcomes in Newton; and
- Examining the Zoning Ordinance as a whole to identify any potential unintended consequences.

The Inspectional Services and Law Departments worked closely with the Planning Department in its analysis.

### Overview

Our analysis takes each of the three potential changes individually. The Planning Department agrees that measuring height to the roof peak rather than the roof midpoint represents a significant improvement over the current definition. Based on Newton's own ordinance history and our research of other communities' ordinances, the Planning Department also feels confident that the proposed height limit of 36 feet in residential areas is appropriate. However, the Planning Department advises that the third part of the petition does not materially improve the regulation of height in Newton and originates from a particular project seeking relief from zoning requirements through an ordinance change.

## Issue 1: Redefinition of Height

### Comparisons with other communities

We examined the definitions of height in the surrounding communities of Brookline, Needham, Sudbury Waltham, Watertown, Wellesley, and Weston. No community defines height as Newton currently does. The majority clearly define that height is measured to the “highest roofline” or similar.

### Impact of proposed change

The proposed changes would mainly affect residential properties; most new commercial properties are flat-roofed and the proposed change to the definition of height would make no practical difference to measurement of height on a flat roof.

The current definition favors sloping roofs by allowing them higher total peak heights. The proposed change eliminates this preference. However, the Planning Department does not expect significantly different roof designs in response to a change in the height measure. Other elements of the Zoning Ordinance help to ensure a sloping roof on residential properties. For example, the “half story” requirement, which limits the area on the third story, requires a sloping roof.

### Suggested changes

The Planning Department recommends the proposed definition above.

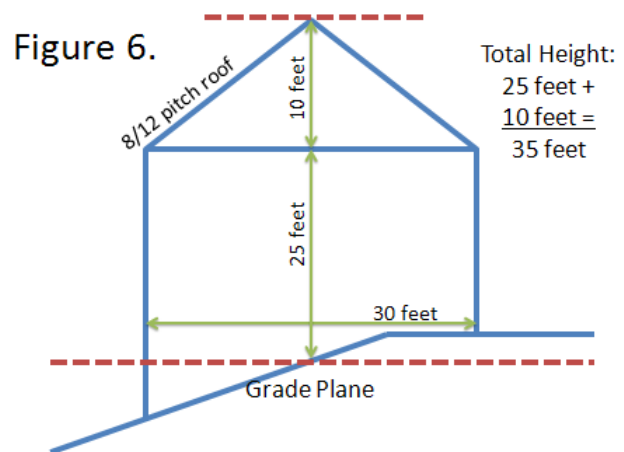
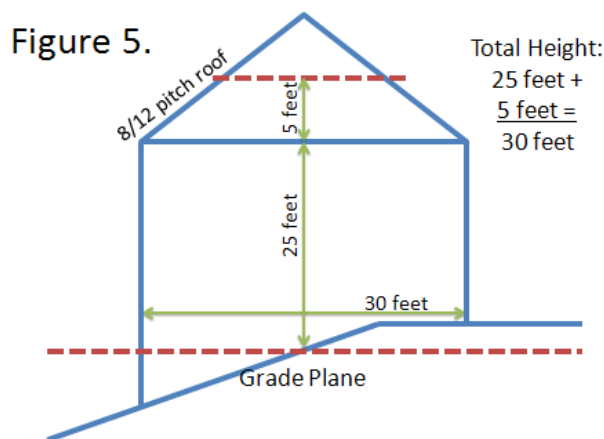
## Issue 2: Increase in Height Limit

### Comparisons with other communities

We examined the definitions of regulation of height for residential areas in the surrounding communities of Brookline, Needham, Sudbury Waltham, Watertown, Wellesley, and Weston. The majority of communities allowed 35 feet of building height for residential structures, and in a few cases as much as 45 feet.

### Impact of proposed change

Combined with the above redefinition of height, a return to a height limit of 36 feet would have limited impact on new construction or existing homes (see Figure 5 and Figure 6 below).



Figures 4 and 5 compare how “height” would change for the same structure from the current definition (Figure 4) to the proposed definition (Figure 5). In both cases the structure is conforming. If the first two floors were 3.4 feet taller, creating a total height of 30 feet under the current rule, then the structure would be nonconforming under the new rule with a total height of 36.7 feet.

It is possible that some currently conforming structures would be made lawfully nonconforming, particularly structures that have already maximized height and have a steeply pitching roof. While being nonconforming can lead to a special permit requirement where expansions would increase the degree of nonconformity, it also allows structures to attain relief for exceeding zoning requirements through a special permit (under Section 30-21) rather than a variance. Furthermore, no special relief would be required for a house that is nonconforming with regard to height that desired other by-right additions or renovations.

#### Suggested changes

The Planning Department suggests that a revised height limit of 36 feet be inserted into the Density and Dimensional Controls Tables in Section 30-15, returning the requirement to the pre-1997 level.

In examining the ordinance for consistency and clarity, it should be noted that the redefinition in Issue 1 above would affect the measurement of height for accessory structures as well. Currently the accessory structure height limit is 18 feet (Sec. 30-15(m)(2)). To match the proposed change in the method of measuring building height, the Planning Department and ISD suggest increasing the maximum height of accessory structures by four feet to a maximum of 22 feet (a smaller increase in height is necessary as accessory structures are smaller and thus, for a given roof pitch, will have lower peaks). This height increase would allow a 12:12 pitch roof over a regularly sized two-car garage (24 feet x 24 feet). (See Appendix B for calculations of allowable accessory structures created by ISD staff.)

#### **Issue 3: Change in Relief for Height Restrictions of Accessory Structures**

The third proposed change in Petition #65-11 is to allow the waiving of the height requirement for accessory structures by special permit rather than by variance. A special permit form of relief is generally considered easier to obtain than a variance, because variances require an applicant to prove hardship. For this reason, the proposed change would likely increase the number of applications for accessory apartments to exceed height limits.

Our research revealed no precedent in surrounding communities for such a policy. In the Newton Zoning Ordinance, it is the case that in Residential districts, exceeding dimensional or density requirements without prior legal nonconformity requires a variance, except where specifically noted (e.g., residential FAR, a garage over 700 square feet, etc.). At a previous Working Session, the Committee discussed the idea that higher accessory buildings may in some cases be more contextual, matching neighboring structures in design and mass, but the same could be said for allowing other dimensional requirements to be waived by special permit, including the height of primary structures, setbacks, lot coverage, etc. The Planning Department has found no adequate rationale for allowing accessory structure height in particular to be increased by special permit.

If the Committee wishes to create a new provision providing special permit relief from accessory building height regulations, the Planning Department recommends that it be allowed for garages only and not all accessory structures. The Committee may also wish to add a maximum height for garages obtaining special permit relief from height requirements. Similarly, the Committee should consider what criteria or finding would be required to allow such a special permit (e.g. “not out of character or scale with the neighborhood,” or similar).

## Consistency with Ordinance

The following definition of “height, contextual,” found in Section 30-1 of the Zoning Ordinance and pertaining exclusively to the Planned Mixed-Use Business Development (PMBD) section of the Zoning Ordinance, uses a similar approach to calculating height to that of the “height” definition. The Committee may want to consider revising this definition to match the new definition of height proposed above.

*Section 30-1: “Height, Contextual:* The vertical distance between the elevations of the following: (a) the Newton Base Elevation utilized by the city as implemented by the engineering division of the department of public works and (b) ~~the mid-point between the highest point of the ridge of the roof and the line formed by the intersection of the wall plane and the roof plane~~ the highest roof surface. Not included in such measurements are 1) cornices which do not extend more than five (5) feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and other ornamental features.”

## IV. Recommendations

The Planning Department recommends the adoption of the revised definition and height limit as proposed in this memorandum, and consider amending the PMBD’s definition of “height, contextual” as drafted below. The Planning Department recommends that the Committee reject part three of the petition.

Summary of recommended language:

Delete existing definition of “Height” in 30-1 and replace it with:

*Section 30-1: Height:* The vertical distance between the elevations of the following: (a) the average grade plane and (b) ~~the peak of the roof line~~ the highest roof surface. Not included in such measurements are 1) cornices which do not extend more than five (5) feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and ornamental features.

Amend definition of “Height, Contextual in 30-1:

*Section 30-1: Height, Contextual:* The vertical distance between the elevations of the following: (a) the Newton Base Elevation utilized by the city as implemented by the engineering division of the department of public works and (b) ~~the mid-point between the highest point of the ridge of the roof and the line formed by the intersection of the wall plane and the roof plane~~ the highest roof surface. Not included in such measurements are 1) cornices which do not extend



more than five (5) feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and other ornamental features.

Amend “building height” in Sec. 30-15 Table 1 for all Single Residence Districts, changing “30” to “36,” and changing the building height for all Multi-Residence Districts currently limited to “30” to “36.”

Amend Sec. 30-15(m)(2) as follows:

(2) The maximum height of each accessory building shall not exceed ~~eighteen (18) feet~~ **22 (twenty-two) feet.**

# Appendix A:

## History of Amendments to Height Definitions and Regulations



## CITY OF NEWTON, MASSACHUSETTS

City Hall  
1000 Commonwealth Avenue  
Newton, Massachusetts 02159  
Telephone: (617) 552-7135 Telecopier: (617) 965-6620

### DEPARTMENT OF PLANNING AND DEVELOPMENT

Eugene A. Bober, Director

Public Hearing Date: January 27, 1997  
ZAP Action Date: March 24, 1997  
Board of Alderman Action Date: April 7, 1997  
90 Day Expiration: April 28, 1997

1997 JAN 24 PM 5:17  
CITY CLERK  
NEWTON, MA 02159

**TO:** Mayor Thomas B. Concannon, Jr.  
Board of Alderman  
Planning and Development Board

**FROM:** Carol E. Bock, Acting Director of Planning and Development  
Mark A. Johnson, Planner

**SUBJECT:** Petition #456-96 Alderman Yates proposing amendment to Sec. 30-1 to eliminate the exemption of uninhabitable space from height restrictions.

**RECOMMENDATION:** APPROVE REVISED DEFINITION OF BUILDING HEIGHT - SECTION 30-1

#### I. ELEMENTS OF THE PETITION

This amendment would eliminate wording in the building height definition which allows pitched roofs to exceed height restrictions. The request for this amendment is part of an effort to limit the height and mass of new buildings which are often out of character with existing neighborhoods.

#### II. BACKGROUND

All around Newton and surrounding communities, homes are being razed to make way for larger modern structures. Developers are building the largest homes zoning regulations will allow to take advantage of the continuing rise in property values (see attached graph). An amendment to the language in the building height definition (as well as revisions to floor area ratio and open space requirements) would reduce the potential mass of new buildings and make it less profitable to demolish existing structures.

Several examples of homes recently or soon to be demolished for new construction include:

- 19 Troy Lane where a one-story bungalow was demolished
- 18 Fuller Street where a 2-1/2 story gable front late 19th Century home was demolished
- Highland Street where a 1840's house was demolished
- 116 Vine Street where a worker's cottage was demolished
- 9 Cedar Street where a house, barn and jam factory will be demolished
- 372 Central Street where a large late 19th Century house was demolished
- 97 Forest Avenue where a Queen Anne demolition was delayed by Historic Commission.
- 69 Webster Park seeks permission to demolish a 2-1/2 story gable front Italianate house.
- 11 Anita Circle where a historic cottage was demolished.
- 3 Gardner Street where a 2 story gable front was demolished
- 20 Richardson Street demolition delayed by Historic Commission.

Half of these demolitions were delayed by the Historical Commission in an effort to save the buildings. Clearly, our historic resources are in jeopardy, as is the character of our neighborhoods.

### III. ANALYSIS

#### A. Current Definition

The current City height restriction in all residential districts is 36 feet. This is consistent with most of our surrounding communities. However what is not consistent is Newton's method of measuring building height. While most communities use the "top of the structure" to measure height, Newton uses the ceiling joists of the upper most habitable space. Any slope above the ceiling is not included in the measurement or the restriction:

*Height:* The distance from the mean grade to the top of the highest roof beams of a building with a flat roof, to the top of a structure, or, *in the case of a building with a pitched roof, to the top of the ceiling joists of the topmost habitable space*, or, where there is no ceiling, to the top of the roof rafters (except that where the topmost habitable space in a pitched roof building has no ceiling, height shall be measured from the roof plate line if the floor of such habitable space is not less than six (6) feet below the roof plate line), provided that:

- (a) cornices do not extend more than five (5) feet above the highest point of the roof;
- (b) chimneys, ventilators, enclosures for machinery of elevators and other projections required above the roof do not exceed fifteen (15) feet in height,
- (c) enclosures for tanks do not exceed twenty (20) feet in height above the roof beams and do not in total area exceed ten percent (10%) of the area of the roof,

- (d) towers, spires, domes, and ornamental features, shall not be included in such measurement. Further, no space above the maximum height established in Section 30-15, Table I, shall be habitable.

By this definition an uninhabitable attic, one in which the ceiling area at a height of 7-1/3 feet above the attic floor is less than 1/3 the area of the floor next below, would not be included in the height measurement. All of the pitched roof extending above the ceiling of the uppermost floor could legally exceed 36 feet. Attached find a sketch that demonstrates the scale of legal residential development in Newton.

#### B. Exemptions

Exemptions to the height restriction are mainly for commercial structures. These include machinery rooms for elevators and tank enclosures which do not exceed ten percent of the area of the roof. Towers, spires, domes, and ornamental features are exempt for use on religious and governmental buildings; however, they are also exempt for residences. Some architectural styles may feature a platform or tower on top of a home, as does the Queen Anne style. To prevent these exemptions from being abused, the definition states that no space above the maximum height may be habitable.

#### **IV. PROPOSED REVISED DEFINITION**

Replace Height definition Section 30-1 with:

*Height:* The height of a building is the vertical distance of the highest point of the roofline above the mean grade of the property. Not included in such measurement are cornices which do not extend more than five feet above the roofline; chimneys, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roofline; enclosures for tanks which do not exceed twenty (20) feet in height above the roofline and do not exceed in united area ten (10) percent of the area of the roof; towers, spires, domes, and ornamental features. Further, no space above the maximum height established in section 30-15, Table I, shall be habitable.

While this language change would ultimately reduce the height of buildings, it may also have other consequences. The zoning code currently allows buildings with three stories in residential districts. In an effort to squeeze in three stories of living space, more new homes could be constructed with flat roofs or roofs with lower slopes. Obviously, flat-roofed structures would not be architecturally compatible with most neighborhoods. The Board may wish an additional change to the zoning code to allow only two or 2-1/2 stories instead of three.

## **V. CONCLUSION AND RECOMMENDATION**

The proposed language change would allow only specific exemptions to the building height restriction. These exemptions would be limited to decorative features and mechanical areas -- spaces that are not habitable. The problem that exists is that height above the ceiling of the uppermost floor may be exempt when determining overall building height. The proposed language change, combined with a reduction in the permitted number of stories, would be an effective means of reducing the size of newly constructed homes.

The Planning Department, therefore, recommends approval of this amendment with the proposed language.

### HEIGHT DEFINITIONS OF SURROUNDING COMMUNITIES

#### **Maximum height restriction in the Town of Needham:**

Height is determined by the vertical distance of the highest point of a structure, or the roof of a building, above the average grade of the ground adjoining the building or surrounding the structure.

Maximum height in all districts is thirty-five (35) feet and 2-1/2 stories.

There is an exemption for towers, steeples, spires or domes of religious or government buildings. Also, schools and municipal buildings may contain three stories and be as high as 40 feet. Separate regulations exist for communication antennas and towers.

#### **Maximum height restriction in the Town of Arlington:**

Height is determined by the vertical distance of the highest point of the roof above the average finished grade of the ground adjoining the building. The definition excludes penthouses, bulkheads, and other allowable superstructures above the roof line.

Exceptions to maximum height limitations are chimneys, ventilators, skylights, water tanks, bulkheads, penthouses and other accessory additions which are customarily carried above the roofs of buildings nor to towers, spires, domes, cupolas, and similar additions to buildings if such additions are not used for living purposes, and if such structures occupy not more than twenty percent (20%) of the ground floor of the building.

#### **Maximum height regulations for the Town of Westwood:**

Height is determined by the highest finished elevation of the ground adjoining the structure to the highest point of the roof line. The limitations on height shall not apply to chimneys, ventilators, skylights, tanks, bulkheads, penthouses, and other necessary features usually carried above the roofline, provided such features do not cover more than twenty-five percent (25%) of the roof of the building or other structure and are used in no way for human occupancy.

**Maximum height regulations for the City of Watertown:**

The vertical distance of the highest point of the structure above the average existing grade along the front building line. The limitation of height shall not apply features that are not used for living purposes provided they do not exceed the maximum height by fifteen (15) feet.

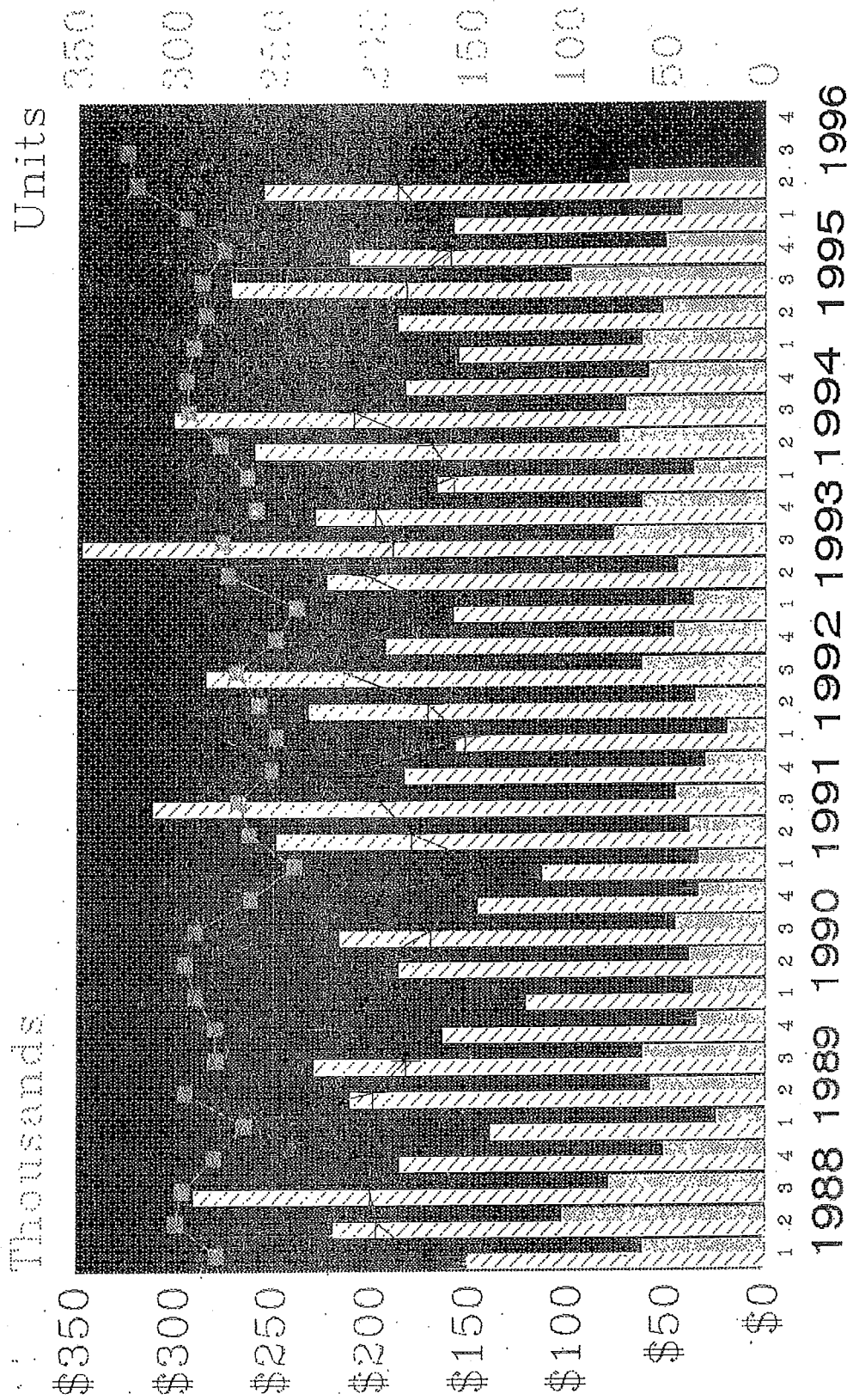
**Maximum height regulations for the City of Gloucester:**

The vertical distance measured from the average grade prior to building construction to the highest point of the roof assembly including parapets in the case of a flat roof, or to the highest point of the peak or ridge in the case of a peak or sloping roof. Not included are spires, cupolas, antennae, or other parts of structures which do not enclose habitable floor space.

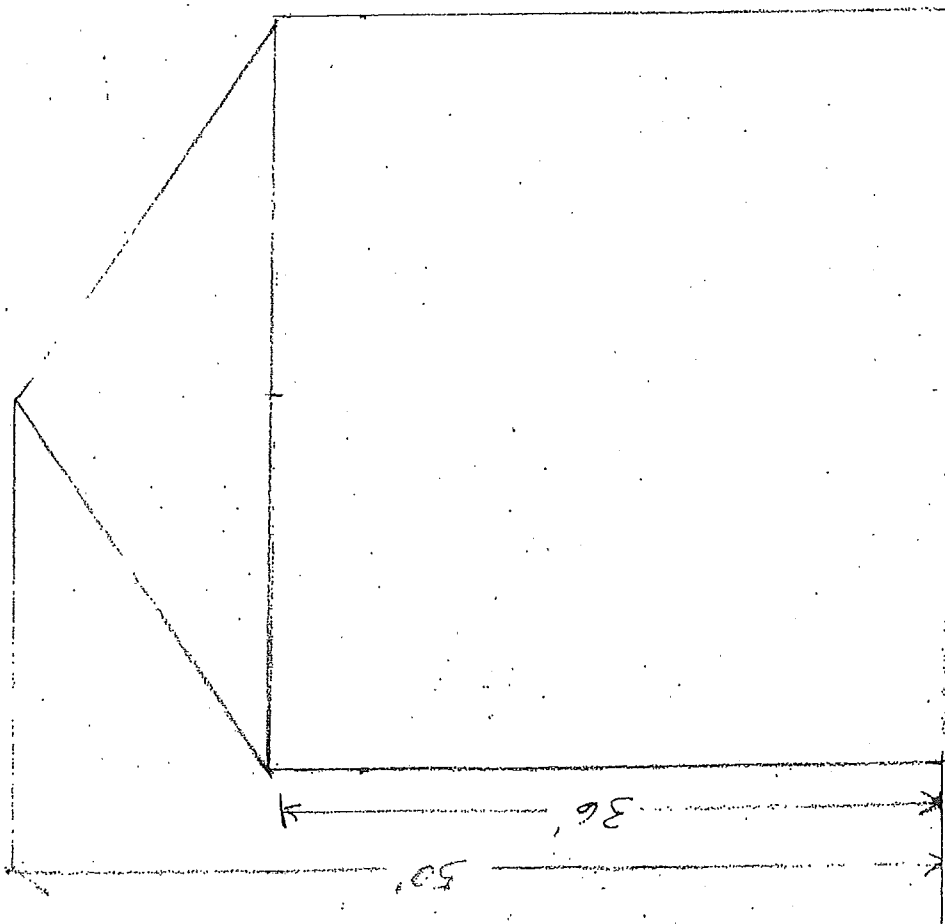
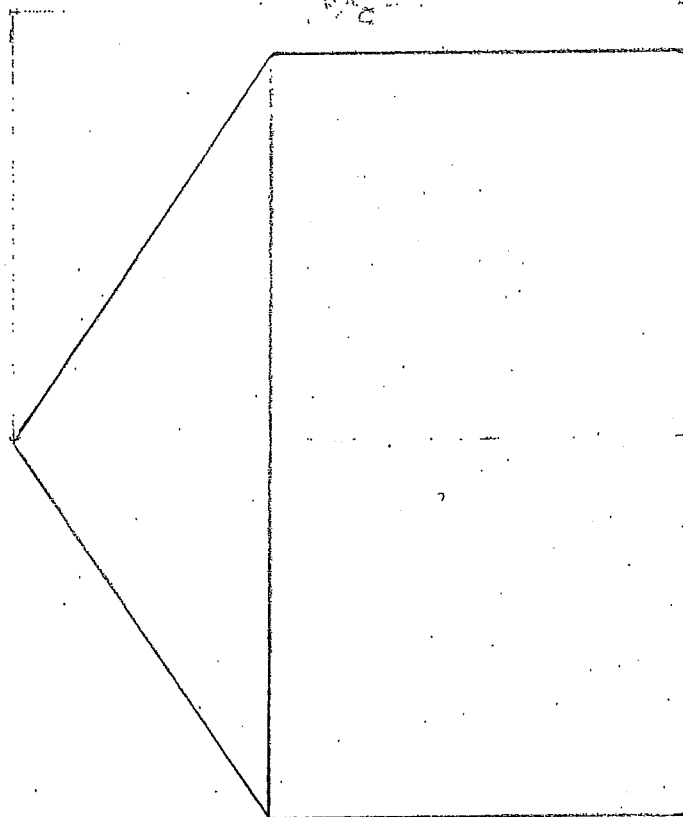


# SALES AND MEDIAN PRICES FOR RESIDENTIAL PROPERTY IN NEWTON

BY QUARTER, 1988 to 1996



Source: BANKER & TRADESMAN



CITY OF NEWTON  
IN BOARD OF ALDERMEN

April 23, 1997

ORDINANCE NO. V-111

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEWTON AS FOLLOWS:

That the Zoning regulations, Chapter 30 of the Revised Ordinances of the City of Newton, Mass. 1995, as amended, be and are hereby further amended as follows:

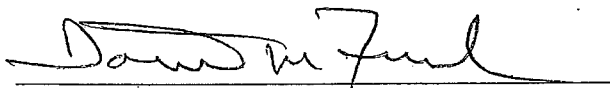
1. Substitute for the existing height definition in Section 30-1 the following:

Height. The vertical distance from grade plane to the average height of the highest roof surface. Not included in such measurements are 1) cornices which do not extend more than five feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and ornamental features. Further, no space above the maximum height established in Section 30-15, Table 1, shall be habitable.

2. Amend the building height limitation in Section 30-15, Table 1 to 30 feet.
3. Add a definition of *Grade plane* to Section 30-1:

*Grade plane*: A reference plane representing the average of finished ground level adjoining the building at all exterior walls.

Approved as to legal form and character

  
Daniel M. Funk  
City Solicitor

Under Suspension of Rules  
Readings Waived and Adopted  
19 yeas 1 nay (Ald. Salvucci)  
3 absent (Ald. Antonellis, Ciccone, Lipsitt)  
1 vacancy

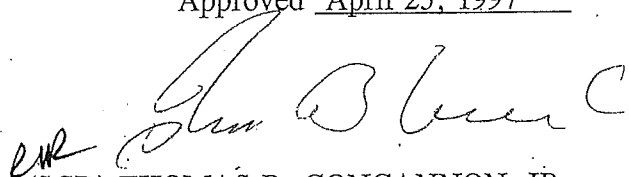
EXECUTIVE DEPARTMENT

Approved April 25, 1997



(SGD) EDWARD G. ENGLISH

City Clerk



(SGD) THOMAS B. CONCANNON, JR.

Mayor

4/30/97

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APR 25 1997

MAYORS OFFICE



David B. Cohen  
Mayor

City of Newton, Massachusetts  
Department of Planning and Development  
Michael J. Kruse, Director

7899

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Public Hearing Date: March 22, 1999  
Zoning and Planning Action Date: May 24, 1999  
Board of Aldermen Action Date: June 7, 1999  
90-Day Expiration Date: June 21, 1999  
Revised Memo Date: April 2, 1999

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CITY CLERK  
NEWTON, MA 02459

TO: Mayor David B. Cohen  
Board of Aldermen  
Planning and Development Board

FROM: Michael Kruse, Director of Planning and Development

Petition # 78-99 of the ZONING & PLANNING COMMITTEE proposing that the definition of "height" in Sec. 30-1 be amended as follows: Height: The vertical distance from the grade plane to the midpoint between the intersection of the wall plane with the roof plane and the highest point of the ridge of the roof. Not included in such measurement are 1) cornices which do not extend more than five (5) feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate ten (10) per cent of the area of the roof; and 4) towers, spires, domes and ornamental features. Further, no space above the maximum height established in Section 30-15, Table 1, shall be habitable.

ZAP COMMITTEE RECOMMENDATION 5-0:

APPROVE

PLANNING & DEVELOPMENT BOARD RECOMMENDATION 5-0: DEFER

ELEMENTS OF THE PETITION

This proposal would change the definition of "height" as most recently amended by Ordinance V-111 on April 23, 1997, by using architectural terms for clarification. The following is the existing text:

*The vertical from the grade plane to the average height of the highest roof surface.. Not included in such measurement are 1) cornices which do not extend more than five (5) feet.*

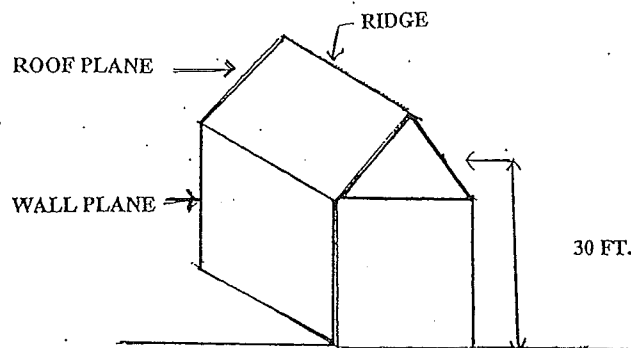
*above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and ornamental features. Further, no space above the maximum height established in Section 30-15, Table 1, shall be habitable.*

### ANALYSIS

The definition of height was amended by Ordinance V-111. It provided for the measurement of building height to the midpoint of the highest roof surface. See illustration below. This was done to encourage peaked, rather than flat, roofs. The Zoning and Planning Committee wanted a clearer definition of height using easily identifiable architectural terms. Thus, we have used the terms "wall plane" and "roof plane" to identify the bottom line of the roof and the ridge (top) of the roof to describe the topmost point of measurement. It is the midpoint of these two measurements from the grade plan (See below) that would determine the height. The words in bold show the proposed language.

Delete the first sentence of the current definition of height in Section 30-1 and substitute the following so that the entire definition reads as follows (New language is in bold.) and insert the illustration for clarification to accompany the text:

*The vertical distance between the elevations of the following: (a) the grade plane and (b) the midpoint between the highest point of the ridge of the roof and the line formed by the intersection of the wall plane and the roof plane. Not included in such measurement are 1) cornices which do not extend more than five (5) feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and ornamental features. Further, no space above the maximum height established in Section 30-15, Table 1, shall be habitable.*



CITY OF NEWTONIN BOARD OF ALDERMEN

(date)

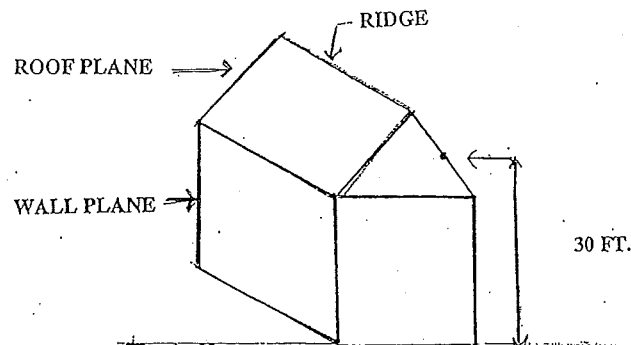
## ORDINANCE NO. V-

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEWTON AS FOLLOWS:

That the Zoning regulations, Chapter 30 of the Revised Ordinances of the City of Newton, Mass. 1995, be and are hereby further amended as follows:

1. Delete the existing definition of "height" in section 30-1 and substitute the following new language:

The vertical distance between the elevations of the following:  
(a) the grade plane and (b) the midpoint between the highest point of the ridge of the roof and the line formed by the intersection of the wall plane and the roof plane. Not included in such measurement are 1) cornices which do not extend more than five (5) feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and ornamental features. ~~Further, no space above the maximum height established in Section 30-15, Table 1, shall be habitable.~~



Approved as to legal form and character

*Daniel M. Funk*

Daniel M. Funk  
City Solicitor

CITY OF NEWTON  
IN BOARD OF ALDERMEN  
ZONING AND PLANNING COMMITTEE REPORT

MONDAY, MARCH 22, 1999

Present: Ald. Yates (Chairman), Ald. Bullwinkle, Merrill, M. Lipof, Baker, and Sangiolo

Absent: Ald. Maguire and Mansfield

Also present: Ald. Lipsitt

Planning Board members: Ernest Siciliano, David Banash (Chairman), Audrey Cooper, Joseph DiDuca, and Joyce Moss, (Planning Department)

City staff: Robert Merryman and Enrique Silva (Planning), Michael Baseman (Law), Linda Finucane (Clerk's)

**PUBLIC HEARINGS AND WORKING SESSION WERE HELD ON THE FOLLOWING ITEMS:**

BACKGROUND: The following report is of the public hearings and deliberations on these items, all of which were previously discussed prior to scheduling the hearings. On March 8 the items as noticed were discussed with architects Sam Streibert, Anatole Zuckerman, and Henry Finch, who had previously participated in the development of the items. It was the hope of the committee that the items would be in proper order at the hearings for a quick and clear deliberation. However, for reasons of intra-departmental miscommunication that the Chairman has subsequently discussed with staff to his satisfaction that the problems are either resolved or on their way to resolution, not all items were totally accurate in the versions sent out or had sufficient backup or lacked explanations e.g., a request from the committee that the more complex items be accompanied by a sketch added to the text for illustration as is done in Brookline and other communities. Nevertheless, the committee pressed forward as best it could, approval was voted of several items that were clear and complete. Others were held pending additional backup, corrected texts, or until preliminary items were ready and could be incorporated in other items.

# 21-99 LAND USE COMMITTEE proposing that Sec. 30-8(d) and 30-9(h) be amended so that in petitions requiring a special permit for an accessory apartment no prospective additions or exterior alterations shall be allowed for the purpose of satisfying the habitable space requirements.

ACTION: APPROVED AS AMENDED 5-0 (M. LIPOF NOT VOTING)

NOTE: The draft language closely reflects the intent of the Land Use Committee. The Planning Department and Planning Board both raised issues about other sections of the accessory apartment ordinance and the possible use of this ordinance for affordable housing. The committee felt that the most restrictive language that reflected the Land Use Committee's concern was all that should or



ZONING AND PLANNING COMMITTEE REPORT

MARCH 22, 1999

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could be changed at this time, and voted approval 5-0.

# 78-99 ZONING & PLANNING COMMITTEE proposing that the definition of "height" in Sec. 30-1 be amended as follows: Height. The vertical distance from the grade plane to the midpoint between the intersection of the wall plane with the roof plane and the highest point of the ridge of the roof. Not included in such measurement are 1) cornices which do not extend more than five (5) feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate ten (10) per cent of the area of the roof; and 4) towers, spires, domes and ornamental features. Further, no space above the maximum height established in Section 30-15, Table 1, shall be habitable.

ACTION: APPROVED AS AMENDED 5-0 (M. LIPOF NOT VOTING)

NOTE: This item, which involves the addition of several words in the first sentence of the height definition, accurately reflects the concerns of the committee at its preliminary discussion, as well as the architects' input. The committee voted 5-0 to approve it subject to the inclusion of an appropriate sketch and deletion of the last sentence, which is the subject of #82-99.

# 81-99 ZONING & PLANNING COMMITTEE proposing that the definition of "attic" in Sec. 30-1 be amended as follows: Attic. The space in a building between the ceiling beams of the top full story and the roof rafters.

ACTION: APPROVED AS AMENDED 5-0 (M. LIPOF NOT VOTING)

NOTE: This item had been discussed with the architects at the meeting on March 8. Mr. Zuckerman had suggested that "joists" was a more precise and clear term than "beams or "rafters," and others agreed. The basic purpose of this item was to add the word "full" to the attic definition. With the further amendment of "joists" for "beams," the committee voted 5-0 to approve the item.

# 82-99 ZONING & PLANNING COMMITTEE proposing that Sec. 30-15, TABLE 1 be amended by adding a superscript 8 to the column headed by BLDG. HEIGHT, as follows: <sup>8</sup>. No space above the maximum height established in Table 1 shall be habitable.

ACTION: APPROVED 5-0 (M. LIPOF NOT VOTING)

NOTE: This item is only the moving of the last sentence of Ordinance V-111 (the most recent height amendment) to the change that it modified for sake of clarity. Ald. Baker asked if the language didn't apply to all districts when it was pointed out that the current language only applied to the residential districts. He agreed to approve it with the proviso that a new item be docketed to cover other districts. The committee voted 5-0 to approve the item and docket 82-99(2).

# 79-99 ZONING & PLANNING COMMITTEE proposing that the definition of "grade plane" in Sec. 30-1 be amended as follows: Grade plane. A reference plane representing the average of finished ground level. The average shall be calculated by using the lowest elevation of finished ground level within the area between the point immediately adjoining the building or structure and either the lot line or a point six

CITY OF NEWTON  
IN BOARD OF ALDERMEN

April 5, 1999

ORDINANCE NO. V-232

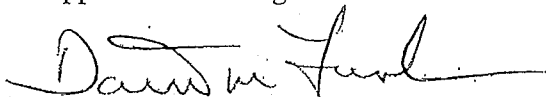
BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEWTON AS FOLLOWS:

That the Zoning regulations, Chapter 30 of the Revised Ordinances of the City of Newton, Mass. 1995, be and are hereby further amended as follows:

1. Delete the existing definition of "height" in section 30-1 and substitute the following new language:

The vertical distance between the elevations of the following: (a) the grade plane and (b) the midpoint between the highest point of the ridge of the roof and the line formed by the intersection of the wall plane and the roof plane. . Not included in such measurement are 1) cornices which do not extend more than five (5) feet above the roof line; 2) chimneys, vents, ventilators and enclosures for machinery of elevators which do not exceed fifteen (15) feet in height above the roof line; 3) enclosures for tanks which do not exceed twenty (20) feet in height above the roof line and do not exceed in aggregate area ten (10) per cent of the area of the roof; and 4) towers, spires, domes and ornamental features.

Approved as to legal form and character:



DANIEL M. FUNK  
City Solicitor

Under Suspension of Rules  
Readings Waived and Adopted  
23 yeas 0 nays 1 absent (Ald. Antonellis)



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APR 15 1999

MAYOR'S OFFICE

EXECUTIVE DEPARTMENT

Approved April 7, 1999

  
(SGD) EDWARD G. ENGLISH  
City Clerk  
(SGD) DAVID B. COHEN  
Mayor

CITY OF NEWTON

IN BOARD OF ALDERMEN

ORDINANCE NO. Z-20

April 7, 2008

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF NEWTON  
AS FOLLOWS:

That the Revised Ordinances of Newton, Massachusetts, 2007, as amended, be and are  
hereby further amended with respect to Chapter 30, Zoning as follows:

1. By deleting from Section 30-1 **Definitions**, "*Story, half*", the height  
designation figure 7'3", and inserting in its place the figure 7'.

2. By adding to Section 30-1 **Definitions** the following new definition:

*Dormer*: A projection built out from a sloping roof, usually containing a  
window or vent.

3. By deleting, in Section 30-1 **Definitions**, the first sentence of the  
definition of *Height*, and inserting in its place the following language:

*Height*: The vertical distance between the elevations of the following:  
(a) the average grade plane and (b) the midpoint between the highest point of the  
ridge of the main building roof and the line formed by the intersection of the top  
of the main building wall plate and the main roof plane.

4. By adding to Section 30-15 **Density/dimensional requirements** the  
following new subsection (t):

30-15(t) **Dormers**. Except as may be allowed by special permit in  
accordance with Section 30-24, the following restrictions shall apply to dormers  
above the second story in single and two family dwellings. Dormers are not  
allowed in accessory structures except by special permit.

a. A dormer may be no wider than fifty percent (50%) of the length of the  
exterior wall of the story next below. Where more than one dormer is located on  
the same side of the roof, the width of all dormers combined may not exceed fifty  
percent (50%) of the length of the exterior wall next below. See illustrations  
below.

# Appendix B:

ISD Calculations for Accessory Structure  
Heights under Proposed Changes

## ACCESSORY BUILDING SIZES

Max height at 22'

24 x 24 GARAGE = 576 Sq ft

Half story max = 384 Sq ft

Half story with a 12/12 pitch roof = 240 Sq ft

Dormers on front and back with 6' wall height = 144 Sq ft

Total = 384 Sq ft

24 x 24 GARAGE = 576 Sq ft

Half story max = 384 Sq ft

Half story with a 10/12 pitch roof = 172.8 Sq ft

Dormers on front and back with 7' wall height = 201.6 Sq ft

Total = 374.4 Sq ft

24 x 24 GARAGE = 576 Sq ft

Half story max = 384 Sq ft

Half story with a 8/12 pitch roof = 72 Sq ft

Dormers on front and back with 7' wall height = 252 Sq ft

Total = 324 Sq ft

35 x 20 GARAGE = 700 Sq ft

Half story max = 467 Sq ft

Half story with a 12/12 pitch roof = 210 Sq ft

Dormers on front and back with 7' wall height = 245 Sq ft

Total = 455 Sq ft

35 x 20 GARAGE = 700 Sq ft

Half story max = 467 Sq ft

Half story with a 10/12 pitch roof = 112 Sq ft

Dormers on front and back with 7' wall height = 294 Sq ft

Total = 406 Sq ft

35 x 20 GARAGE = 700 Sq ft

Half story max = 467 Sq ft

Half story with a 8/12 pitch roof = 105 Sq ft

Dormers on front and back with 6' 6" wall height = 362 Sq ft

Total = 467 Sq ft